UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOANN MOUTON,

Plaintiff,

v.

VILLAGRAN, et. al.,

Defendants.
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No. C 13-4121 EDL (PR)

ORDER OF PARTIAL DISMISSAL; ORDER OF SERVICE

Plaintiff, a state prisoner currently incarcerated at Central California Women's Facility, has filed a pro se civil rights complaint under 42 U.S.C. § 1983.[1] Plaintiff's second amended complaint was dismissed with leave to amend and she has now filed a third amended complaint.[2] For the reasons that follow, the court dismisses defendant Sheriff Villagran and orders service upon defendant Nurse Zamora.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id*. at § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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[1] Plaintiff consented to magistrate judge jurisdiction on December 4, 2013. (Docket No. 14.)

[2] Plaintiff's motion for extension of time is GRANTED. Plaintiff's third amended complaint is deemed timely filed.

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only give the defendant fair notice of what the . . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations and internal quotations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff states that she was in shackles while exiting the bus. As she came down the steps of the bus, Sheriff Villagran was supposed to be at the bottom of the steps to help inmates off the last step and onto the ground. However, Sheriff Villagran was not there. As a result, plaintiff fell and injured herself. Sheriff Villagran later ran up, smelling like cigarette smoke. Plaintiff further alleges that Nurse Zamora denied plaintiff medical treatment at the scene, and stated that she did not have time to look at plaintiff because it was Nurse

Zamora's lunch break. Instead, Nurse Zamora gave plaintiff an ice pack but did not order an x-ray or conduct any other medical treatment.

The treatment a prisoner receives in prison and the conditions under which she is confined are subject to scrutiny under the Eighth Amendment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993). The Amendment also imposes duties on these officials, who must provide all prisoners with the basic necessities of life such as food, clothing, shelter, sanitation, medical care and personal safety. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

A prison official violates the Eighth Amendment when two requirements are met: (1) the deprivation alleged must be, objectively, sufficiently serious, *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a sufficiently culpable state of mind, *id*. (citing *Wilson*, 501 U.S. at 297). Neither negligence nor gross negligence will constitute deliberate indifference. *See Farmer*, 511 U.S. at 835-36 & n.4. A prison official cannot be held liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the standard for criminal recklessness is met, i.e., the official knows of and disregards an excessive risk to inmate health or safety. *See id*. at 837. The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *See id*.

Even with liberal construction, the allegation against Sheriff Villagran does not state a claim for an Eighth Amendment violation. The objective prong of an Eighth Amendment claim is not satisfied. "[E]very injury suffered by an inmate does not necessarily translate into constitutional liability for prison officials." *Osolinski v. Kane*, 92 F.3d 934, 936-37 (9th Cir. 1996). "[O]nly those deprivations denying 'the minimal civilized measure of life's necessities,' are sufficiently grave to form the basis of an Eighth Amendment violation." *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (citation omitted); *see, e.g.*, *Osolinski,* 92 F.3d at 938 (defendants entitled to qualified immunity against prisoner's Eighth Amendment claim

stemming from second degree burns suffered when oven door fell off its hinges and burned his arms); *Jackson v. State of Arizona*, 885 F.2d 639, 641 (9th Cir. 1989) (slippery floors, by themselves, do not amount to cruel and unusual punishment); *Connolly v. County of Suffolk*, 533 F. Supp. 2d 236 (D. Mass. 2008) (summary judgment granted for defendants because ladderless bunk beds did not meet objective component of Eighth Amendment in light of evidence that "[t]housands of . . . inmates access bunk beds daily without the aid of a ladder and without incident" and only about a dozen injuries had been reported). Requiring an inmate to descend stairs while shackled does not deny her the minimal civilized measure of life's necessities. Prison officials requiring a shackled inmate to descend a flight of stairs did not present an objectively serious condition required for an Eighth Amendment claim. In addition, the subjective prong is not met. There is no indication that Sheriff Villagran knew of, and disregarded, an excessive risk to plaintiff's safety. Plaintiff does not suggest that Sheriff Villagran's absence was purposefully based on knowledge that plaintiff faced a substantial risk of harm.

Thus, an Eighth Amendment claim against Sheriff Villagran is not stated. Leave to amend will not be granted because the complaint well describes the incident, and it simply does not amount to deliberate indifference to a risk to the inmate's safety. This is not to say that plaintiff was not hurt, as her allegations clearly indicate that she was hurt. Rather, as *Osolinski*, 92 F.3d at 936-37, observed, not every injury translates into constitutional liability for prison officials. For these reasons, Sheriff Villagran is DISMISSED from this action.

On the other hand, deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A determination of "deliberate indifference" involves an examination of two elements: the seriousness of the prisoner's medical need and the nature of the

defendant's response to that need. *Id.* at 1059.[3]

Cognizant that this court must liberally construe plaintiff's allegations, the court finds that plaintiff's claim against Nurse Zamora states a claim for relief. Taking plaintiff's allegations as true, Nurse Zamora knew that plaintiff faced a substantial risk of harm without immediate treatment because Nurse Zamora was aware of plaintiff's medical history. Nonetheless, according to plaintiff, Nurse Zamora disregarded that risk and failed to take steps to abate it.

CONCLUSION

1. The clerk of the court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the second amended complaint and all attachments thereto (docket no.), a magistrate judge jurisdiction consent form, and a copy of this order to Nurse Zamora at the Elmwood Complex Women's Facility. The clerk of the court shall also mail a courtesy copy of the complaint and a copy of this order to the Office of County Counsel, 70 West Hedding Street, 9th Floor, San Jose, CA 95112. Additionally, the clerk shall mail a copy of this order to plaintiff.

2. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to Rule 4, if defendant, after being notified of this action and asked by the court, on behalf of plaintiff, to waive service of the summons, fails to do so, she will be required to bear the cost of such service unless good cause be shown for her failure to sign

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[3] It is not clear if plaintiff was a pre-trial detainee at the time of this incident. Regardless, even though pretrial detainees' claims arise under the Due Process Clause, the Eighth Amendment serves as a benchmark for evaluating those claims. *See Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996) (Eighth Amendment guarantees provide minimum standard of care for pretrial detainees). The Ninth Circuit has determined that the appropriate standard for evaluating constitutional claims brought by pretrial detainees is the same one used to evaluate convicted prisoners' claims under the Eighth Amendment. "The requirement of conduct that amounts to 'deliberate indifference' provides an appropriate balance of the pretrial detainees' right to not be punished with the deference given to prison officials to manage the prisons." *Redman v. County of San Diego*, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc) (citation omitted).

and return the waiver form. If service is waived, defendant will be required to serve and file an answer within sixty (60) days from the date on which the request for waiver was sent to her. Defendant is asked to read the statement set forth at the bottom of the waiver form that more completely describes the duties of the parties with regard to waiver of service of the summons. If service is waived after the date provided in the Notice but before defendant has been personally served, the Answer shall be due sixty (60) days from the date on which the request for waiver was sent or twenty (20) days from the date the waiver form is filed, whichever is later.

3. In order to expedite the resolution of this case, the court orders as follows:

a. No later than sixty days from the date the waiver is sent from the court, defendant shall file a motion for summary judgment or other dispositive motion. The motion shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56, and shall include as exhibits all records and incident reports stemming from the events at issue. If defendant is of the opinion that this case cannot be resolved by summary judgment, she shall so inform the court prior to the date her summary judgment motion is due. All papers filed with the court shall be promptly served on plaintiff.

b. At the time the dispositive motion is served, defendant shall also serve, on a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.4 (9th Cir. 2003). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012). At that time, defendant shall also submit the magistrate judge jurisdiction consent form.

c. Plaintiff's opposition to the dispositive motion shall be filed with the court and served upon defendant no later than twenty-eight days from the date the motion was served upon her.

d. Defendant shall file her reply brief no later than fourteen days after the opposition is served upon her.

e. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the court so orders at a later date.

4. All communications by plaintiff with the court must be served on defendant, or defendant's counsel once counsel has been designated, by mailing a true copy of the document to defendant or defendant's counsel.

5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the parties may conduct discovery.

6. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." She also must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: December 11, 2014.

ELIZABETH D. LAPORTE
United States Chief Magistrate Judge

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